

property damage will bar payment for personal injury or death except for a split claim provided the provisions of § 536.60 are followed. Supplemental payments for either property or injury are barred by 10 U.S.C. 2672. Accordingly, claimants will be informed that only one claim or payment is permitted.

(b) *Notice of right to reconsideration.* Notice of disapproval or final offer issued by an authority listed in § 536.88(b) will advise the claimant of a right to reconsideration to be submitted in writing not later than six months from the date of mailing the notice. Such a request will suspend the requirement to bring suit for a minimum of six months or until action is taken on the request. The claimant will be so informed. See the Attorney General's Regulations at 28 CFR 14.9(b), posted on the USARCS Web site; for the address see § 536.2(a).

(c) *Original approval or settlement authority—(1) Reconsideration.* An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the FTCA upon request of the claimant or the legal representative.

(2) *Settlement correction.* An original approval or settlement authority may reopen and correct action on a claim previously settled in whole or in part (even if a settlement agreement has been executed) when an error contrary to the parties' mutual understanding is discovered in the original action. For example: a claim was settled for \$15,000, but the settlement agreement was typed to read "\$1,500" and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. An approval or settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant's legal representative will reopen action on that claim, and if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(d) *A successor approval or settlement authority—(1) Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an FTCA claim upon re-

quest of the claimant, the claimant's authorized agent, or the claimant's legal representative only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(e) *Requirement to forward a request for reconsideration.* When full relief is not granted, forward all requests for reconsideration of an ACO's denial or final offer to the Commander USARCS for action. Include all investigative material and legal analyses generated by the request.

(f) *Action prior to forwarding.* A request for reconsideration should disclose fully the legal and/or factual bases that the claimant has asserted as grounds for relief and provide appropriate supporting documents or evidence. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approval or settlement authority will reconsider the claim and attempt to settle it, granting relief as warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be forwarded to the Commander USARCS. The claimant will be informed of such transfer.

(g) *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or partial relief) upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud. Attempted further requests for reconsideration on other grounds will not toll the six-month period set forth in 28 U.S.C. 2401(b).

Subpart E—Claims Cognizable Under the Non-Scope Claims Act

§ 536.90 Statutory authority for the Non-Scope Claims Act.

The statutory authority for this subpart is set forth in the Act of October

Department of the Army, DoD

§ 536.94

1962, 10 U.S.C. 2737, 76 Stat. 767, commonly called the “Non-Scope Claims Act (NSCA).”

§ 536.91 Scope for claims under the Non-Scope Claims Act.

(a) This subpart applies worldwide and prescribes the substantive bases and special procedural requirements for the administrative settlement and payment of not more than \$1,000 for any claim against the United States for personal injury, death or damage to, or loss of, property caused by military personnel or civilian employees, incident to the use of a U.S. vehicle at any location, or incident to the use of other U.S. property on a government installation, which claim is not cognizable under any other provision of law.

(b) For the purposes of this subpart, a “government installation” is a facility having fixed boundaries owned or controlled by the government, and a “vehicle” includes every description of carriage or other artificial contrivance used, or capable of being used, as means of transportation on land (1 U.S.C. 4).

(c) Any claim in which there appears to be a dispute about whether the employee was acting within the scope of employment will be considered under subparts C, D, or F of this part. Only when all parties, including an insurer, agree that there is no “in scope” issue will the claim be considered under this subpart.

§ 536.92 Claims payable under the Non-Scope Claims Act.

(a) *General.* A claim for personal injury, death, or damage to, or loss of, property, real or personal, is payable under this subpart when:

(1) Caused by negligent or wrongful acts or omissions of Department of Defense or Department of the Army (DA) military personnel or civilian employees, as listed in § 536.23(b):

(i) Incident to the use of a vehicle belonging to the United States at any place or;

(ii) Incident to the use of any other property belonging to the United States on a government installation.

(2) The claim is not payable under any other claims statute or regulation

available to the DA for the administrative settlement of claims.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 536.93 Claims not payable under the Non-Scope Claims Act.

Under this subpart, a claim is not payable that:

(a) Results in whole or in part from the negligent or wrongful act of the claimant or his or her agent or employee. The doctrine of comparative negligence does not apply.

(b) Is for medical, hospital, or burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than as provided in § 536.93(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement and pain and suffering are not payable.

(d) Is for loss of use of property or for the cost of substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is in part legally recoverable, the part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

(g) In some circumstances some claims may be partially payable. See DA Pam 27-162, paragraph 5-4 for more information on claims that may be partially payable.

§ 536.94 Settlement authority for claims under the Non-Scope Claims Act.

(a) *Settlement authority.* The following are delegated authority to pay up to